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ADMIRALTY AND MARITIME LOCAL RULES

1. TITLE AND SCOPE OF RULES

1-1. Title.

These are the Local Rules of Practice in Admiralty and Maritime Claims before the United States District Court for the Northern District of California. They should be cited as "Admir. L.R. ____."

1-2. Scope.

These admiralty local rules apply only to proceedings that are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("FRCivP Supp"): maritime attachment and garnishment; actions *in rem*; possessory, petitory and partition actions; actions for exoneration from or limitation of liability; and statutory condemnation and forfeiture proceedings analogous to maritime actions *in rem*. The Federal Rules of Civil Procedure and the civil local rules of this court are also applicable in these proceedings, except to the extent that the civil local rules are inconsistent with these admiralty local rules.

Cross Reference

See FRCivP Supp A.

2. PLEADING IN ADMIRALTY AND MARITIME PROCEEDINGS

2-1. Verification of Pleadings.

Verification of every pleading, statement of right or interest, or other paper as required by FRCivP Supp B, C, and D shall be upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized to so verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

Cross Reference

See 28 U.S.C. § 1746.

2-2. Itemized Demand for Judgment.

The demand for judgment in every complaint filed under FRCivP Supp B or C except a demand for a salvage award shall allege the dollar amount of the debt or damages for which the action was commenced. The demand for judgment shall also allege the nature of other items of damage. The amount of the special bond posted under FRCivP Supp E(5)(a) may be based upon these allegations.

Cross Reference

See FRCivP Supp B, C, E(5)(a).

2-3. Affidavit that Defendant is not Found within the District.

The affidavit required by FRCivP Supp B(1) to accompany the complaint seeking a money judgment shall describe the efforts made by and on behalf of plaintiff to find and serve the defendant within the district. The phrase "not found within the district" in FRCivP Supp B(1) means that, in an *in personam* action, the defendant is not physically present in this district and cannot be personally served with the summons and complaint.

Cross Reference

FRCivP 4(d).

3. JUDICIAL AUTHORIZATION AND PROCESS

3-1. Review by Judge.

(a) **Authorization to Issue Process.** Except in forfeiture actions by the United States, before the clerk will issue a summons and process of arrest, attachment or garnishment to any party, including intervenors, under FRCivP Supp B and C, the pleadings, the affidavit required by FRCivP Supp B and accompanying supporting papers must be reviewed by a judge, as defined in Civil L.R. 1-5(I). If the judge finds the conditions set forth in FRCivP Supp B or C exist, the judge shall authorize the clerk to issue appropriate process. Supplemental process or alias process may thereafter be issued by the clerk upon application without further order of the court.

(b) **Exigent Circumstances.** If the plaintiff or his attorney certifies by affidavit submitted to the clerk that exigent circumstances make review impracticable, the clerk shall issue a summons and warrant of arrest or process of attachment and garnishment. In actions by the United States for forfeitures for federal statutory violations, the clerk, upon filing of the complaint, shall forthwith issue a summons and warrant for the arrest of the vessel or other property without requiring a certification of exigent circumstances.

(c) **Personal Appearance.** Unless otherwise required by the judge, the review by the judge will not require the presence of the applicant or its attorney but shall be based upon the pleadings and other papers submitted on behalf of that party.

(d) **Order.** Upon approving the application for arrest, attachment or garnishment, the judge will issue an order to the clerk authorizing the clerk to issue an order for arrest, attachment or garnishment. The proposed form of order authorizing the arrest, attachment or garnishment, and the order of arrest, attachment or garnishment shall be submitted with the other documents for review.

(e) **Request for Review.** Except in case of exigent circumstances, application for review shall be made by filing a Notice of Request for Review in Accordance with FRCivP Supp B or C with the clerk and stating therein the process sought and any time requirements within which the request must be reviewed. The clerk shall contact the judge to whom the matter is assigned to arrange for the necessary review. It will be the duty of the applicant to ensure that the application has been reviewed, and upon approval, presented to the clerk for issuance of the appropriate order.

3-2. When Assigned Judge Unavailable.

If the judge to whom a case under these admiralty local rules has been assigned is not available, as defined in Civil L.R. 1-5(n), any matter pertaining to arrest, attachment, garnishment, security or release may be presented to any other judge in the district without reassigning the case.

3-3. Return Date.

In an action under FRCivP Supp D, a judge may order that the claim and answer be filed on a date earlier than 20 days after arrest. The order may also set a date for expedited hearing of the action.

3-4. Process Held in Abeyance.

If a party does not wish the process to be issued at the time of filing the action, the party shall request that issuance of process be held in abeyance. It will not be the responsibility of the clerk or the marshal to ensure that process is issued at a later date.

4. ATTACHMENT, GARNISHMENT AND ARREST OF PROPERTY

4-1. Order to Show Cause Regarding Intangible Property.

The summons issued pursuant to FRCivP Supp C(3) shall direct the person having control of intangible property to show cause, no later than 10 days after service, why the intangible property should not be delivered to the court to abide the judgment. Pursuant to *ex parte* motion made under Civil L.R. 7-11, for good cause shown, a judge may lengthen or shorten the time. Service of the summons has the effect of an arrest of the intangible property and brings it within the control of the court. The person who is served may deliver or pay over to the marshal the intangible property proceeded against to the extent sufficient to satisfy the plaintiff's claim. If such delivery or payment is made, the person served is excused from the duty to show cause. Claimants of the property may show cause as provided in FRCivP Supp C(6) why the property should not be delivered to or retained by the court.

4-2. Notice of Action and Arrest.

(a) Publication. The notice required by FRCivP Supp C(4) shall be published once in a newspaper named in Civil L.R. 77-4, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

- (1)** The court, title, and number of the action;
- (2)** The date of the arrest;
- (3)** The identity of the property arrested;
- (4)** The name, address, and telephone number of the attorney for plaintiff;
- (5)(i)** In an in rem forfeiture action for violation of a federal statute, a statement that any person who asserts an interest in or right against the property pursuant to FRCivP. Supp C(6)(a) must file a verified statement identifying such interest within 30 days after the earlier of (1) the date of service of the Government's complaint or (2) completed publication of notice under Rule C(4);

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(5)(ii) In an in rem action not governed by subsection (i), a statement that any person who asserts a right of possession or any ownership interest in the property pursuant to FRCivP. Supp C(6)(b) must file a verified statement of right or interest within the period specified by court order or, if the court has not fixed a case-specific deadline, within the period prescribed by Rule C(6)(b)(i)(A) of the Supplemental Rules for Certain Admiralty and Maritime Claims. See Commentary, below, for clarification.

(6) A statement that any person required to file a verified statement of right or interest must also file and serve an answer to the complaint within twenty days after filing the statement of interest or right, and that otherwise, default may be entered and condemnation ordered;

(7) In an in rem action governed by FRCivP, Supp C(6)(b), a statement that applications for intervention under FRCivP 24 by persons claiming maritime liens or other interests against the property shall be filed within the time fixed by the court; and

(8) The name, address, and telephone number of the marshal.

(b) Filing of Proof of Publication. No later than thirty days after the date of publication, plaintiff shall cause to be filed with the clerk sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

Cross Reference

See FRCivP Supp C(3) and Advisory Committee Notes to the 2000 Amendment regarding subsections C(6)(a) and (b), which differentiate between in rem forfeitures for violation of a federal statute and traditional admiralty and maritime actions.

Commentary

It appears that an error was made when FRCivP. Supp. Rule 6(b)(i)(A) (for Certain Admiralty and Maritime Claims) was amended in 2000. As currently framed, that Rule requires the filing of a verified statement of right or interest (unless otherwise ordered by the court) "within 10 days after the earlier of (1) the execution of process, or (2) completed publication of notice under Rule C(4)." The error is rooted in the fact that execution of process (in this setting) always will precede completion of publication of notice. Thus, parties should understand that the deadline (absent a court order specifying otherwise) in fact always will be within ten days after execution of process. Action (by consensus and through the national rule making process) to correct the error in the federal rule is well under way, but will not be completed for some time.

4-3. Service by Marshal--When Required.

Only a marshal shall arrest or attach a vessel or tangible property aboard a vessel. If other tangible or intangible property is the subject of the action, the clerk may deliver the warrant to a marshal, a person or organization contracted with by the United States, a person specially appointed by the court for that purpose, or, if the action is brought by the United States, any officer or employee of the United States.

Cross Reference

See FRCivP Supp C(3).

4-4. Instructions to the Marshal.

The party who requests a warrant of arrest or process of attachment or garnishment shall provide instructions to the marshal or the person authorized to serve the warrant pursuant to Admir. L.R. 4-3.

4-5. Property in Possession of United States Officer.

When the property to be attached or arrested is in the custody of an employee or officer of the United States, the marshal will deliver a copy of the complaint and warrant of arrest or summons and process of attachment or garnishment to that officer or employee if present, and otherwise to the custodian of the property. The marshal will instruct the officer, employee or custodian to retain custody of the property until ordered to do otherwise by a judge.

4-6. Security Deposit for Arrest or Attachment of Vessels.

The first party who seeks arrest or attachment of a vessel or property aboard a vessel shall deposit with the marshal the sum estimated by the marshal to be sufficient to cover the expenses of the marshal including, but not limited to, dockage, keepers, maintenance and insurance for at least 10 days. The marshal is not required to execute process until the deposit is made. The party shall advance additional sums from time to time as requested to cover the marshal's estimated expenses until the property is released or disposed of as provided in FRCivP Supp E.

4-7. Undertakings in Lieu of Arrest.

If, before or after commencement of suit, plaintiff accepts any written undertaking to respond on behalf of the vessel or other property sued in return for foregoing its arrest or stipulating to the release of such vessel or other property, the undertaking shall become a defendant in place of the vessel or other property sued and be deemed referred to under the name of the vessel or other property in any pleading, order or judgment in the action referred to in the undertaking. The preceding shall apply to any such undertaking, subject to its own terms and whether or not it complies with Civil L. R. 65.1-1 and has been approved by a judge or clerk.

4-8. Adversary Hearing.

The adversary hearing following arrest or attachment or garnishment that is called for in FRCivP Supp E(4)(f) shall be conducted upon 3 days written notice to plaintiff, unless otherwise ordered. This local rule shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604 or to action by the United States for forfeitures.

5. DEFENSE; LIMITATION OF LIABILITY

5-1. Deposit of Security for Costs.

The amount of security for costs under FRCivP Supp F(1) shall be \$1,000 unless otherwise ordered, and may be combined with the security for value and interest.

5-2. Order of Proof at Trial.

Where the vessel interests seeking statutory limitation of liability have raised the statutory defense by way of answer or complaint, the plaintiff in the former or the damage claimant in the latter shall proceed with its proof first, as is normal at civil trials.

6. JUDGMENT, DEFAULT AND DEFAULT JUDGMENT

6-1. Default in Action *in Rem*.

(a) Notice Required. A party seeking a default judgment in an action *in rem* must show that due notice of the action and arrest of the property has been given:

- (1) By publication as required in FRCivP Supp C(4);
- (2) By service upon the master or other person having custody of the property; and
- (3) By service under FRCivP 5(b) upon every other person who has not appeared in the action and is known to have an interest in the property.

(b) Persons with Recorded Interests.

- (1) If the defendant property is a vessel documented under the laws of the United States, plaintiff must attempt to notify all persons named in the United States Coast Guard Certificate of Ownership.
- (2) If the defendant property is a vessel numbered as provided in the Federal Boat Safety Act, plaintiff must attempt to notify the persons named in the records of the issuing authority.
- (3) If the defendant property is of such character that there exists a governmental registry of recorded property interests or security interests in the property, the plaintiff must attempt to notify all persons named in the records of each such registry.

(c) Failure to Give Notice. Failure to give notice as provided by this local rule shall be grounds for setting aside the default under applicable rules but shall not affect title to property sold pursuant to order of sale or judgment.

6-2. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may apply for entry of default under FRCivP 55(a). Judgment may be entered under FRCivP 55(b) at any time after default has been entered. Default will be entered upon a showing that:

- (a) Notice has been given as required by Admir. L.R. 6-1;
- (b) The time to answer has expired, and

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(c) No one has filed a verified statement of right or interest in the property.

6-3. Rate of Prejudgment Interest Allowed.

Unless a judge directs otherwise or as provided by statute, prejudgment interest shall be awarded at the rate authorized in 28 U.S.C. § 1961, providing for interest on judgments.

7. SECURITY

7-1. Security for Costs.

In an action under the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, a party may move upon notice to all parties for an order to compel an adverse party to post security for costs with the clerk pursuant to FRCivP Supp E(2)(b). Unless otherwise ordered, the amount of security shall be \$500. The party so ordered shall post the security within five days after the order is entered. A party who fails to post security when due may not participate further in the proceedings. A party may move for an order increasing the amount of security for costs.

7-2. Appraisal.

An order for appraisal of property so that security may be given or altered will be entered by the clerk at the request of any interested party. If the parties do not agree in writing upon an appraiser, a judge will appoint the appraiser. The appraiser shall be sworn to the faithful and impartial discharge of the appraiser's duties before any federal or state officer authorized by law to administer oaths. The appraiser shall give one day's notice of the time and place of making the appraisal to counsel of record. The appraiser shall promptly file the appraisal with the clerk and serve it upon counsel of record. The appraiser's fee will be paid by the moving party, unless otherwise ordered or agreed. The appraiser's fee is a taxable cost of the action.

8. INTERVENTION

8-1. Intervenor's Lien or Other Non-Possessory or Non-Ownership Claim in Admiralty and Maritime Cases.

(a) Filing of Intervening Complaint. When a vessel or other property has been arrested, attached or garnished in an action filed pursuant to FRCivP, Supp B, C(6)(b), or D, and the vessel or property is in the hands of the marshal or custodian substituted therefor, anyone having a lien or other non-possessory or non-ownership based claim against the vessel or property is required to present said claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judge. The clerk shall promptly deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel or custodian of the property. Intervenor shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal.

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party plaintiff permits vacation of an arrest, attachment or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

9. CUSTODY SALE AND RELEASE OF PROPERTY

9-1. Custody of Property.

(a) Safekeeping of Property. When a vessel, cargo or other property is brought into the marshal's custody by arrest or attachment, the marshal shall arrange for adequate safekeeping, which may include the placing of keepers on or near the vessel. A substitute custodian in place of the marshal may be appointed by order of the court.

(b) Insurance. The marshal may procure insurance to protect the marshal, deputies, keepers and substitute custodians, from liabilities assumed in arresting and holding the vessel, cargo or other property, and in performing whatever services may be undertaken to protect the vessel, cargo or other property, and to maintain the court's custody. The party who applies for removal of the vessel, cargo or other property to another location, for designation of a substitute custodian, or for other relief that will require an additional premium, shall reimburse the marshal therefor. The premiums charged for the liability insurance are taxable as administrative costs while the vessel, cargo or other property is in custody of the court.

(c) Vessel Operations. Following arrest or attachment of a vessel, no cargo handling, repairs or movement may be made without an order of court. The applicant for such an order shall give notice to the marshal and to all parties of record. Upon proof of adequate insurance coverage of the applicant to indemnify the marshal for his or her liability, the court may direct the marshal to permit cargo handling, repairs, movement of the vessel or other operations. Before or after the marshal has taken custody of a vessel, cargo or other property, any party of record may move for an order to dispense with keepers or to remove or place the vessel, cargo or other property at a specified facility, to designate a substitute custodian, or for similar relief. Notice of the motion shall be given to the marshal and to all parties of record. The judge will require that adequate insurance on the property will be maintained by the successor to the marshal, before issuing the order to change arrangements.

(d) Claims by Suppliers for Payment of Charges. A person who furnishes supplies or services to a vessel, cargo or other property in custody of the court who has not been paid and claims the right to payment as an expense of administration shall file an invoice with the clerk in the form of a verified claim at any time before the vessel, cargo or other property is released or sold. The supplier must serve copies of the claim on the marshal, substitute custodian if one has been appointed, and all parties of record. The court may consider the claims individually or schedule a single hearing for all claims.

9-2. Sale of Property.

(a) Notice. Notice of sale of arrested or attached property shall be published in one or more newspapers to be specified in the order for sale. Unless otherwise ordered by a judge upon a showing of urgency or impracticality or unless otherwise provided by law, such notice shall be published for at least 6 days before the date of sale.

(b) Payment of Bid. Unless otherwise provided in the order, in all public auction sales by the marshal under orders of sale in admiralty and maritime claims, the marshal shall require of the last and highest bidder at the sale a minimum deposit in cash, certified check or cashier's check, of the full purchase price if it does not exceed \$500, and otherwise \$500 or ten percent of the bid, whichever is greater. The balance, if any, of the purchase price shall be paid in cash, certified check or cashier's check before confirmation of the sale or within 3 days of the dismissal of any opposition which may have been filed, exclusive of Saturdays, Sundays and legal holidays. Notwithstanding the above, a plaintiff or intervening plaintiff foreclosing a properly recorded preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash, certified check or cashier's check, up to the total amount of the secured indebtedness as established by affidavit filed and served by that party on all other parties no later than 10 days prior to the date of sale.

(c) Report and Confirmation. At the conclusion of the sale, the marshal shall forthwith file a written report to the court of the fact of sale, the price obtained and the name and address of the buyer. The clerk of the court shall endorse upon such report the time and date of its filing. If within 3 days, exclusive of Saturdays, Sundays and legal holidays, no written objection is filed, the sale shall stand confirmed as of course, without the necessity of any affirmative action thereon by the court and the clerk upon request shall so state to the marshal in writing; except that no sale shall stand confirmed until the buyer has complied fully with the terms of his purchase. If no opposition to the sale is filed, the expenses of keeping the property pending confirmation of sale shall be charged against the party bearing expenses before the sale (subject to taxation as costs), except that if confirmation is delayed by the purchaser's failure to pay any balance which is due on the price, the cost of keeping the property subsequent to the 3-day period hereinabove specified shall be borne by the purchaser.

(d) Penalty for Late Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed under these local rules or a different time specified by the court shall also pay the marshal the costs of keeping the property from the date payment of the balance was due to the date the bidder pays the balance and takes delivery of the property. Unless otherwise ordered by the court, the marshal shall refuse to release the property until this additional charge is paid.

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(e) Penalty for Default in Payment of Balance. A successful bidder who fails to pay the balance of the bid within the time allowed is in default and the court may at any time thereafter order a sale to the second highest bidder or order a new sale as appropriate. Any sum deposited by the bidder in default shall be applied to pay any additional costs incurred by the marshal by reason of the default including costs incident to resale. The balance of the deposit, if any, shall be retained in the registry subject to further order of the court, and the court shall be given written notice of its existence whenever the registry deposits are reviewed.

(f) Opposition to Sale. A party filing an opposition to the sale, whether seeking the reception of a higher bid or a new public sale by the marshal, shall give prompt notice to all other parties and to the purchaser. Such party shall also prior to filing an opposition, secure the marshal's endorsement upon it acknowledging deposit with the marshal of the necessary expense of keeping the property for at least 5 days. Pending the court's determination of the opposition, such party shall also advance any further expense at such times and in such amounts as the marshal shall request, or as the court orders upon application of the marshal or the opposing party. Such expense may later be subject to taxation as costs. In the event of failure to make such advance, the opposition shall fail without necessity for affirmative action thereon by the court. If the opposition fails, the expense of keeping the property during its pendency shall be borne by the party filing the opposition.

(g) Disposition of Deposits.

(1) Objection Sustained. If an objection is sustained, sums deposited by the successful bidder will be returned to the bidder forthwith. The sum deposited by the objector will be applied to pay the fees and expenses incurred by the marshal in keeping the property until it is resold, and any balance remaining shall be returned to the objector. The objector will be reimbursed for the expense of keeping the property from the proceeds of a subsequent sale.

(2) Objection Overruled. If the objection is overruled, the sum deposited by the objector will be applied to pay the expense of keeping the property from the day the objection was filed until the day the sale is confirmed, and any balance remaining will be returned to the objector forthwith.

10. DESERTING SEAMAN CASES

10-1. Service.

Upon filing a verified petition for return of wages deposited in the registry of the court by a Coast Guard official to whom the duties of shipping commissioner have been delegated pursuant to the provisions of 46 U.S.C. § 11505, a copy of the petition shall be served forthwith on the United States Attorney and a copy mailed to the Attorney General of the United States, after which a sworn return of such service and mailing shall be filed.

10-2. Time to Plead.

The United States has 20 days after receipt of a copy of the petition by the United States Attorney in which to file its responsive pleading and claim.

11. DECEASED SEAMEN

11-1. Receipt of Money, Property or Wages.

When the court receives the money, property or wages of a deceased seaman, pursuant to 46 U.S.C. § 10705-10707, the clerk of the court shall receive any cash or check and perform an inventory of the money property or wages. The next of kin of the deceased seaman may claim the money, property or wages by filing with the clerk a Kinsman's Petition for Wages and Effects of Deceased Seaman.

11-2. Disposition of Unclaimed Money, Property or Wages.

If a claim for the money, property or wages of a deceased seaman has not been substantiated and allowed 6 years after receipt of the money, property or wages, or if, 6 years after its receipt it appears to the court that no claim will have to be satisfied, any property shall be sold; and the money, wages and proceeds from the sale shall be deposited by the clerk in the United States Treasury fund for unclaimed monies.